

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
MIDDLE DIVISION**

**MAC East, LLC,  
an Alabama Limited Liability  
Corporation,**

**PLAINTIFF,**

**vs.**

**SHONEY'S LLC.,  
a Tennessee limited  
liability company,**

**DEFENDANT.**

**CASE NO. 2:05-cv-1038-MEF**

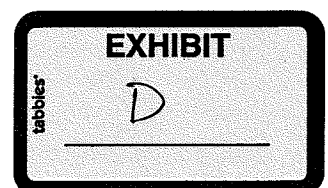
**AFFIDAVIT**

STATE OF ALABAMA

COUNTY OF MONTGOMERY

This day personally appeared before me, the undersigned authority at law in and for the state and county aforesaid, JOAN J. SURLES, who after being by me first duly sworn stated and depomed upon her oath as follows:

“My name is Joan J. Surles. I am Senior Vice President of Operations for McClinton & Company, Inc., and in that capacity, handle the documentation and property management matters for all entities directly or indirectly owned and/or managed by Joel D. McClinton, including MAC East, LLC (“Mac”). I understand this affidavit will be filed in court to support a motion.

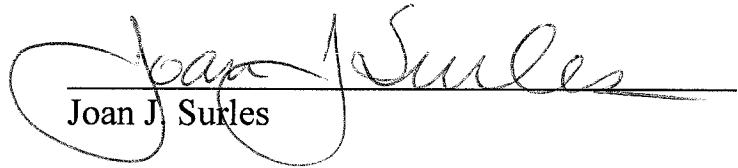


“I have been a Mac employee for 15 years. I was involved in the 2002 property transaction between Mac and Shoney’s, as well as the 2005 sublease agreement between Mac and City Café. It was my understanding that Mac would need the approval of Shoney’s before the sublease agreement could be finalized and executed. For that reason, I contacted Donna Power, Shoney’s director of asset management, regarding Shoney’s approval of City Café as a sub-tenant.

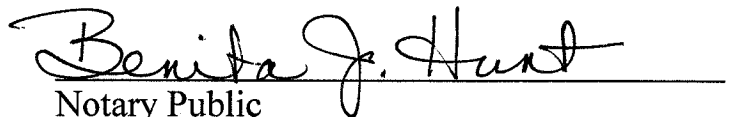
“In response to Shoney’s requests, Mac sent detailed financial information concerning City Café. The information sent to Shoney’s included financial statements, income statements, and photographs of various City Café operations. To my knowledge, Mac sent everything that Shoney’s ever requested regarding the approval of City Café as a subtenant. On May 9, 2005, Mac formally presented a package of information to Shoney’s for approval of City Café. At no time did Shoney’s ever question City Café as a sub-tenant.

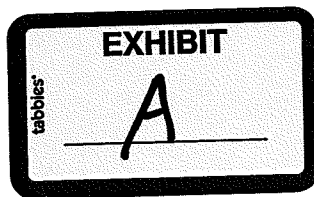
“On June 17, 2005, I received a voicemail message from Donna Power. A true and accurate copy of a transcript of that message is attached to this affidavit as Exhibit A. In her message, Ms. Power stated that Shoney’s would only approve City Café as a sub-tenant if Mac would pay Shoney’s an additional \$70,000 if Shoney’s was released from the lease or \$90,000 if Shoney’s was not released from its obligations under the lease.

“I was shocked when I heard this message because this was the first time that Shoney’s had ever given any indication that it would require payment from Mac before approving City Café as a subtenant. Based on the voicemail message I received from Ms. Power, it was my understanding that Shoney’s did not have a problem with City Café as a sub-tenant. To this day, Shoney’s has never given any indication that it would require anything other than payment from Mac in order to approve City Café as a sub-tenant.”

  
Joan J. Surles

SWORN TO and subscribed before me this 18<sup>th</sup> day of April 2006.

  
Notary Public  
My Commission Expires: 8-30-08



This is a transcription of a voicemail message left to Joan Surles from Donna Power of Shoney's on June 17, 2005 at 15:52 :

“Joan, this is Donna Power at Shoney's, um, I just had a conversation with, uh, with our owners and, uh, I was advised to, uh, to let you know that we will, uh, approve the sub-lease if you, uh, pay us \$70, 000.00 and get us released from the lease, or, uh, or we will approve it if you pay \$90, 000.00 and Shoney's has to remain liable. So, if you'll, um, if you let the, um, the, uh, the, owners know that, or the, the tenants know that, um, get back to me, um, most of our systems are down this afternoon, my email is totally out, so, um, some of the phones are working so if, if your in, if you want to give me a call back that'll be great. Thank you. Bye, bye...oh, 615-231-2854.”